

**GRANT CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF HUMAN SERVICES
AND
SHELBY COUNTY GOVERNMENT**

This Grant Contract, by and between the State of Tennessee, Department of Human Services, hereinafter referred to as the 'State' and Shelby County Government, hereinafter referred to as the "Grantee," is for the provision of Weatherization Assistance Program (WAP), as further defined in the "SCOPE OF SERVICES."

Grantee Federal Employer Identification Number: 62-6000841

A. SCOPE OF SERVICES:

- A.1. The Grantee shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Grant Contract.
- A.2. The Grantee shall perform *American Recovery and Reinvestment Act (ARRA) of 2009* WAP program and fiscal responsibilities in accordance with the *Department of Human Services' Weatherization Assistance Program (WAP)*; all applicable U.S. Department of Energy regulations; all applicable Office of Management and Budget (OMB) circulars; and all applicable Department of Human Services' program or fiscal policy memorandums issued before the contract end date.
- A.3. The Grantee shall expend no less than ninety-five percent (95%) of grant funds for direct services to clients for materials and labor; health and safety activities; and pre- and post- energy audits.
- A.4. The Grantee shall weatherize a minimum of One Thousand Nine Hundred Fourteen (1,914) eligible dwelling units according to the U.S. Department of Energy's *Southeast Weatherization Field Guide* during the contract period, and shall complete planning and production activities according to the following schedule. The Grantee shall, if these benchmarks are not met, have seven (7) business days to submit a corrective action plan to the State. If, following implementation of the Grantee's approved corrective action plan the Grantee does not meet benchmarks as set forth in the plan, the State reserves the right to reduce the Maximum Liability of this contract and reallocate funds to other providers within the Grantee's service delivery area or other providers within the state.
 - a. Within thirty (30) days of contract execution - submission of final plans for program implementation to meet production goals
 - b. On or before December 31, 2009 – no less than twenty-five percent (25%) of the total minimum production in this contract
 - c. On or before March 31, 2010 – no less than fifty percent (50%) of the total minimum production in this contract
 - d. On or before June 30, 2010 – no less than eighty-five percent (85%) of the total minimum production in this contract
 - e. On or before September 30, 2010 – no less than one hundred percent (100%) of the total minimum production in this contract
- A.5. The Grantee shall continuously accept customer applications throughout the contract period.
- A.6. The Grantee shall assist applicants, as needed, with the completion of their applications providing alternatives to office visits for submission of applications by elderly and disabled citizens.

- A.7. The Grantee shall determine eligibility for clients based on the federal poverty guidelines as prescribed by the state.
- A.8. The Grantee shall determine client eligibility and, notify clients of their eligibility, for services within fifteen (15) business days of receipt of each application. Any exception to this timeframe must be granted by the State Community Services Program Director.
- A.9. The Grantee shall conduct a pre- and post-energy audit on approved dwelling units.
- A.10. The Grantee may subcontract the provision of pre- and post-energy audits to supplement current staff.
- A.11. The Grantee shall be responsible for ensuring that all energy auditors and weatherization installers have either a TVA-issued certificate or other State approved weatherization training document.
- A.12. The Grantee shall use, or ensure the usage of, the National Energy Audit Tool (NEAT) or the Manufactured Home Energy Audit (MHEA), or another audit tool approved by the State, to conduct pre- and post-energy audits on approved dwelling units.
- A.13. The Grantee shall ensure performance of subcontracted audits at a cost not to exceed the maximum limit established by the State.
- A.14. The Grantee shall ensure that pre-energy audits are completed within fifteen (15) business days of notification to the auditor.
- A.15. The Grantee shall ensure that post- energy audits are completed within fifteen (15) business days of notification by the weatherization installer of the completion of the weatherized unit.
- A.16. The Grantee shall implement state approved bidding procedures to award weatherization work to private weatherization installers.
- A.17. The Grantee shall utilize a State-approved document when contracting with a weatherization installer.
- A.18. The Grantee shall only pay the weatherization installer following a satisfactory post-energy audit of the dwelling.
- A.19. Absent a satisfactory post-energy audit of the dwelling, the Grantee shall require corrective action of the weatherization installer. The Grantee shall ensure that a follow-up post-audit is performed upon completion of any corrective action by the weatherization installer prior to payment.
- A.20. The Grantee shall limit individual household costs to an amount not to exceed a total of \$7,100 to include weatherization and health and safety measures. Weatherization measures are limited to \$6,500 per dwelling.
- A.21. The Grantee shall ensure that the weatherization measures are completed on the client home within thirty (30) business days of the award date for the job.
- A.22. The Grantee shall provide energy conservation education to eligible households.
- A.23. The Grantee shall submit financial and client services reports in a form and frequency prescribed by the State. Failure to submit said reports timely and in the appropriate format shall result in the State reallocating funds to other providers within the Grantee's service delivery area. Payment of the Grantee's monthly invoice shall be contingent upon timely receipt and accuracy of said reports.
- A.24. The Grantee shall cooperate with the State and Federal entities regarding all monitoring.

- A.25. The Grantee shall be liable for all ARRA funds questioned as a result of monitoring or audit findings.
- A.26. The Grantee shall establish in writing procedures for client grievances and shall ensure that the grievance procedure is explained and provided in writing to all potential clients.
- A.27. The Grantee shall submit Expense and Revenue reports in a form and frequency prescribed by the State. Payment of the Grantee's monthly invoice shall be contingent upon timely receipt and accuracy of said reports.
- A.28. The Grantee may utilize individuals identified by the State as eligible to participate in the TANF subsidized employment program to supplement current staff in the provision of services under this contract.
- A.29. The Grantee may employ individuals referred by the State who are eligible to participate in the Temporary Assistance to Needy Families (TANF) subsidized employment program.

B. GRANT CONTRACT TERM:

This Grant Contract shall be effective for the period commencing on June 9, 2009 and ending on September 30, 2010. The State shall have no obligation for services rendered by the Grantee which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Grant Contract exceed Fourteen Million Seven Hundred Sixty-Two Thousand Fifty-One Dollars and No Cents (\$14,762,051.00). The Grant Budget, attached and incorporated herein as a part of this Grant Contract as Attachment A and shall constitute the maximum amount due the Grantee for the service and all of the Grantee's obligations hereunder. The Grant Budget line-items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Grantee.
- C.2. Compensation Firm. The maximum liability of the State is not subject to escalation for any reason unless amended. The Grant Budget amounts are firm for the duration of the Grant Contract and are not subject to escalation for any reason unless amended, except as provided in Section C.6.
- C.3. Payment Methodology. The Grantee shall be compensated for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the maximum liability established in Section C.1. Upon progress toward the completion of the work, as described in Section A of this Grant Contract, the Grantee shall submit invoices prior to any reimbursement of allowable costs.
- C.4. Travel Compensation. Reimbursement to the Grantee for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time and shall be contingent upon and limited by the Grant Budget funding for said reimbursement.
- C.5. Invoice Requirements. The Grantee shall invoice the State no more often than monthly, with all necessary supporting documentation, to:

Regina Surber, Director
 State of Tennessee
 Department of Human Services
 Citizens' Plaza – 14th Floor
 400 Deaderick Street
 Nashville, TN 37243-1403

- a. Each invoice shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

- (1) Invoice/Reference Number (assigned by the Grantee);
- (2) Invoice Date;
- (3) Invoice Period (period to which the reimbursement request is applicable);
- (4) Grant Contract Number (assigned by the State to this Grant Contract);
- (5) Account Name: Department of Human Services; Adult and Family Services;
- (6) Account/Grantor Number (uniquely assigned by the Grantee to the above-referenced Account Name);
- (7) Grantee Name;
- (8) Grantee Federal Employer Identification Number or Social Security Number (as referenced in this Grant Contract);
- (9) Grantee Remittance Address;
- (10) Grantee Contact (name, phone, and/or fax for the individual to contact with invoice questions);
- (11) Complete Itemization of Reimbursement Requested for the Invoice Period, which shall detail, at minimum, the following:

- i. Reimbursement Amount Requested by Grant Budget Line-Item for the invoice period (including any travel expenditure reimbursement requested in accordance with and attaching to the invoice appropriate documentation and receipts as required by the above-referenced "State Comprehensive Travel Regulations");
- ii. Amount Reimbursed by Grant Budget Line-Item to Date;
- iii. Total Amount Reimbursed under the Grant Contract to Date; and
- iv. Total Reimbursement Amount Requested (all line-items) for the invoice period.

- b. The Grantee understands and agrees that an invoice to the State under this Grant Contract shall:

- (1) include only reimbursement requests for actual, reasonable, and necessary expenditures required in the delivery of service described in Grant Contract Section A subject to the Grant Budget and any other provision of this Grant Contract relating to allowable reimbursements; and
- (2) not include any reimbursement requests for future expenditures.

- c. The Grantee agrees that timeframe for reimbursement begins when the State is in receipt of each invoice meeting the minimum requirements above.

- d. The Grantee shall complete and sign a "Substitute W-9 Form" provided to the Grantee by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Grant Contract for the Grantee. The Grantee shall not invoice the State under this Grant Contract until the State has received this completed form.

C.6. Budget Line-items. Expenditures, reimbursements, and payments under this Grant Contract shall adhere to the Grant Budget. The Grantee may reduce the Professional Fee/Grant Award line-item by up to five (5) percent of the line-item amount and increase other Grant Budget line-items such that the net result of variances shall not increase the total Grant Contract amount detailed by the Grant Budget. Any increase in the Grant Budget grand total amount shall require an amendment of this Grant Contract.

C.7. Disbursement Reconciliation and Close Out. The Grantee shall submit a final invoice and grant disbursement reconciliation report within Forty-Five (45) days of the Grant Contract end date and in form and substance acceptable to the State.

- a. If total disbursements by the State pursuant to this Grant Contract exceed the amounts permitted by the Section C, Payment Terms and Conditions of this Grant Contract, the Grantee shall refund the difference to the State. The Grantee shall submit said refund with the final grant disbursement reconciliation report.

- b. The State shall not be responsible for the payment of any invoice submitted to the state after the final invoice and grant disbursement reconciliation report. The State will not deem any Grantee costs submitted for reimbursement after the final invoice to be allowable and reimbursable by the State, and such invoices will NOT be paid.
 - c. The Grantee's failure to provide a final grant disbursement reconciliation report to the state as required shall result in the Grantee being deemed ineligible for reimbursement under this Grant Contract, and the Grantee shall be required to refund any and all payments by the state pursuant to this Grant Contract.
 - d. The Grantee must close out its accounting records at the end of the grant period in such a way that reimbursable expenditures and revenue collections are NOT carried forward.
- C.8. Indirect Cost. Should the Grantee request reimbursement for indirect cost, the Grantee must submit to the State a copy of the indirect cost rate approved by the cognizant federal agency and the State. The Grantee will be reimbursed for indirect cost in accordance with the approved indirect cost rate to amounts and limitations specified in the attached Grant Budget. Once the Grantee makes an election and treats a given cost as direct or indirect, it must apply that treatment consistently and may not change during the grant period. Any changes in the approved indirect cost rate must have prior approval of the cognizant federal agency and the State. If the indirect cost rate is provisional during the term of this agreement, once the rate becomes final, the Grantee agrees to remit any overpayment of funds to the State, and subject to the availability of funds the State agrees to remit any underpayment to the Grantee.
- C.9. Cost Allocation. If any part of the costs to be reimbursed under this Grant Contract are joint costs involving allocation to more than one program or activity, such costs shall be allocated and reported in accordance with the provisions of Department of Finance and Administration Policy Statement 03 or any amendments or revisions made to this policy statement during the Grant Contract period.
- C.10. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the costs invoiced therein.
- C.11. Unallowable Costs. The Grantee's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits or monitoring conducted in accordance with the terms of this Grant Contract, not to constitute allowable costs.
- C.12. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Grantee under this or any Contract between the Grantee and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Grantee.
- C.13. Automatic Deposits. The Grantee shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Grantee by the State. Once this form has been completed and submitted to the State by the Grantee all payments to the Grantee, under this or any other contract the Grantee has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Grantee shall not invoice the State for services until the Grantee has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Grant Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

- D.2. Modification and Amendment. This Grant Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Grant Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Grantee at least Thirty (30) days written notice before the effective termination date. The Grantee shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the State be liable to the Grantee for compensation for any service which has not been rendered. The final decision as to the amount, for which the State is liable, shall be determined by the State. Should the State exercise this provision, the Grantee shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Grantee fails to properly perform its obligations under this Grant Contract in a timely or proper manner, or if the Grantee violates any terms of this Grant Contract, the State shall have the right to immediately terminate the Grant Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Grantee shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Grant Contract by the Grantee.
- D.5. Subcontracting. The Grantee shall not assign this Grant Contract or enter into a subcontract for any of the services performed under this Grant Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Grant Contract below pertaining to "Conflicts of Interest," "Lobbying," "Nondiscrimination," "Public Accountability," "Public Notice," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Grantee shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Grantee warrants that no part of the total Grant Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Grantee in connection with any work contemplated or performed relative to this Grant Contract.
- D.7. Lobbying. The Grantee certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Grantee shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - c. The Grantee shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U.S. Code*.

- D.8. Nondiscrimination. The Grantee hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Grantee on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Grantee shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.9. Public Accountability. If the Grantee is subject to *Tennessee Code Annotated*, Title 8, Chapter 4, Part 4 or if this Grant Contract involves the provision of services to citizens by the Grantee on behalf of the State, the Grantee agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Grantee shall display in a prominent place, located near the passageway through which the public enters in order to receive Grant supported services, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

- D.10. Public Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Grantee shall include the statement, "This project is funded under an agreement with the STATE AGENCY NAME." Any such notices by the Grantee shall be approved by the State.
- D.11. Licensure. The Grantee and its employees and all sub-grantees shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.
- D.12. Records. The Grantee (and any approved subcontractor) shall maintain documentation for all charges under this Contract. The books, records, and documents of the Grantee (and any approved subcontractor), insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the state agency, the Comptroller of the Treasury, or their duly appointed representatives. The records of not-for-profit entities shall be maintained in accordance with the *Accounting Manual for the Recipients of Grant Funds in the State of Tennessee*, published by the Tennessee Comptroller of the Treasury (available at <http://comptroller.state.tn.us/ma/nonprofit/nonprofit1.pdf>). The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.13. Prevailing Wage Rates. All grants and contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401 *et seq.*
- D.14. Monitoring. The Grantee's activities conducted and records maintained pursuant to this Grant Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.15. Progress Reports. The Grantee shall submit brief, periodic, progress reports to the State as requested.
- D.16. Annual Report and Audit. The Grantee shall prepare and submit, within nine (9) months after the close of the reporting period, an annual report of its activities funded under this Grant Contract to the commissioner or head of the Granting agency, the Tennessee Comptroller of the Treasury,

and the Commissioner of Finance and Administration. The annual report for any Grantee that receives five hundred thousand dollars (\$500,000) or more in aggregate federal and state funding for all its programs shall include audited financial statements. All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Grantee may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit contract between the Grantee and the licensed independent public accountant shall be on a contract form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the *Audit Manual for Governmental Units and Recipients of Grant Funds* published by the Tennessee Comptroller of the Treasury. The Grantee shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Grantee shall be subject to the provisions relating to such fees contained in the prescribed contract form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the State Granting Department, the Tennessee Comptroller of the Treasury, and the Department of Finance and Administration and shall be made available to the public.

- D.17. Procurement. If the other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, and/or contracted services, such procurement shall be made on a competitive basis, including the use of competitive bidding procedures, where practical. The Grantee shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Grant Contract. In each instance where it is determined that use of a competitive procurement method was not practical, said documentation shall include a written justification for such decision and non-competitive procurement. Further, if such reimbursement is to be made with funds derived wholly or partially from federal sources, the determination of cost shall be governed by and reimbursement shall be subject to the Grantee's compliance with applicable federal procurement requirements.

The Grantee shall obtain prior approval from the State before purchasing any equipment under this Grant Contract.

- D.18. Strict Performance. Failure by any party to this Grant Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Grant Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.19. Independent Contractor. The parties hereto, in the performance of this Grant Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Grant Contract shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Grantee, being a political subdivision of the State, is governed by the provisions of the Tennessee Government Tort Liability Act, *Tennessee Code Annotated*, Sections 29-20-101 *et seq.*, for causes of action sounding in tort. Further, no contract provision requiring a Tennessee political entity to indemnify or hold harmless the State beyond the liability imposed by law is enforceable because it appropriates public money and nullifies governmental immunity without the authorization of the General Assembly.

- D.20. State Liability. The State shall have no liability except as specifically provided in this Grant Contract.

- D.21. Force Majeure. The obligations of the parties to this Grant Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.22. State and Federal Compliance. The Grantee shall comply with all applicable state and federal laws and regulations in the performance of this Grant Contract.
- D.23. Governing Law. This Grant Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Grantee agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Grant Contract. The Grantee acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.24. Completeness. This Grant Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Grant Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.25. Severability. If any terms and conditions of this Grant Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Grant Contract are declared severable.
- D.26. Headings. Section headings are for reference purposes only and shall not be construed as part of this Grant Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Grant Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Grant Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Regina Surber, Director
 State of Tennessee
 Department of Human Services
 Citizens' Plaza – 14th Floor
 400 Deaderick Street
 Nashville, TN 37243-1403
 Regina.Surber@tn.gov
 Telephone # (615) 313-4762
 FAX # (615) 532-9956

The Grantee:

Kaye Lawler, Executive Director
 Shelby County Government

100 North Main Street, Suite 1300
 Memphis, TN38103
 kaye.lawler@shelbycountyttn.gov
 Telephone # (901) 545-4630
 FAX # (901) 545-3592

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Grant Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Grant Contract upon written notice to the Grantee. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Grantee shall cease all work associated with the Grant Contract. Should such an event occur, the Grantee shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Grantee shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Voluntary Buyout Program. The Grantee acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.
- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
 - b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Grantee understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State grantee would not be appropriate, and in such cases the State may refuse Grantee personnel. Inasmuch, it shall be the responsibility of the State to review Grantee personnel to identify any such issues.
 - c. With reference to either subsection a. or b. above, a grantee may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: www.state.tn.us/finance/rds/ocr/waiver.html. The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Grant Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.
- E.5. Charges to Service Recipients Prohibited. The Grantee shall not collect any amount in the form of fees or reimbursements from the recipients of any service provided pursuant to this Grant Contract.
- E.6. No Equipment Acquisition. This Grant Contract does not involve the acquisition and disposition of equipment acquired with funds provided under this Grant Contract.
- E.7. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Grantee by the State or acquired by the Grantee on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and

regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Grantee to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Grantee's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Grantee of this Grant Contract; previously possessed by the Grantee without written obligations to the State to protect it; acquired by the Grantee without written restrictions against disclosure from a third party which, to the Grantee's knowledge, is free to disclose the information; independently developed by the Grantee without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Grantee to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Grantee due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Grant Contract.

E.8. HIPAA Compliance. The State and the Grantee shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.

- a. The Grantee warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this contract.
- b. The Grantee warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the grant so that both parties will be in compliance with HIPAA.
- c. The State and the Grantee will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and the Grantee in compliance with HIPAA. This provision shall not apply if information received by the State under this grant is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.

E.9. Debarment and Suspension. The Grantee certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Grant Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Grant Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Grantee shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- E.10. Metropolitan Government of Nashville and Davidson County. While it is the policy of the Metropolitan Government of Nashville and Davidson County not to discriminate on the basis of age, race, sex, color, national origin or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services and activities, the Metropolitan Government advises that it is currently responding to allegations brought by private litigants that it is not in complete compliance with all aspects of the ADA. The Metropolitan Government is currently engaged in communications with the Department of Justice to assure Metro's compliance will be satisfactory.
- E.12. Civil Rights Compliance. The Grantee shall file a copy of an "Assurance compliance" (Form HHS 690) with the U.S. Department of Health and Human Services Office of Civil Rights, retaining a copy of the form in its file to be made available, upon request, to the State.
- E.13. Drug-Free Workplace. The Grantee shall maintain a drug-free workplace in accordance with the "Drug-Free Workplace Act of 1998".
- E.14. Federal Economic Stimulus Funding. This Grant Contract requires the Grantee to provide products and/or services that are funded in whole or in part under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, (Recovery Act). The Grantee is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of the Recovery Act are met and that the Grantee provides information to the State as required.

The Grantee (and any subcontractor) shall comply with the following:

- a. Federal Grant Award Documents, as applicable.
- b. Executive Office of the President, Office of Management and Budget (OMB) Guidelines as posted at www.whitehouse.gov/omb/recovery_default/, as well as OMB Circulars, including but not limited to A-102 and A-133 as posted at www.whitehouse.gov/omb/financial_offm_circulars/.
- c. Office of Tennessee Recovery Act Management Directives (posted on the Internet at www.tnrecovery.gov).
- d. The subrecipient Grantee, if covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, agrees to specifically identify Recovery Act expenditures separately for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133.
- e. The Recovery Act, including but not limited to the following sections of that Act:
 - (1) Section 1604 – Disallowable Use. No funds pursuant to this Grant Contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.
 - (2) Section 1512 – Reporting and Registration Requirements.
 - i. The Grantee must report on use of Recovery Act funds provided through this Grant Contract. Information from these reports will be made available to the public.
 - ii. The subrecipient Grantee must maintain current registrations in the Central Contractor Registration (www.ccr.gov) at all times during which they have an active Grant Contract funded with Recovery Act funds.
 - (3) Section 1553 – Recovery Act Whistleblower Protections. An employee of any non-Federal employer receiving covered funds under the Recovery Act may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the

Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee believes is evidence of one or more of the following related to the implementation or use of covered funds:

- i. gross mismanagement,
- ii. gross waste,
- iii. substantial and specific danger to public health or safety,
- iv. abuse of authority, or
- v. violation of law, rule, or regulation (including those pertaining to the competition for or negotiation of a Grant Contract).

Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: The Grantee and any subcontractor shall post notice of the rights and remedies as required under Section 1553. (Refer to Section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 located at www.recovery.gov, for specific requirements of this section and prescribed language for the notices.)

- (4) **Section 902 – Access Of Government Accountability Office.** The Grantee shall provide that the Comptroller General and his representatives are authorized:
 - i. to examine any records of the Grantee or any of its subcontractors, that directly pertain to, and involve transactions relating to, this Grant Contract or a subcontract; and
 - ii. to interview any officer or employee of the Grantee or any of its subcontractors regarding such transactions.
- (5) **Section 1514 – Inspector General Reviews.** Any inspector general of a federal department or executive agency has the authority to review, as appropriate, any concerns raised by the public about specific investments using such funds made available in the Recovery Act. In addition, the findings of such reviews, along with any audits conducted by any inspector general of funds made available in the Recovery Act, shall be posted on the inspector general's website and linked to the website established by Recovery Act Section 1526, except that portions of reports may be redacted to the extent the portions would disclose information that is protected from public disclosure under sections 552 and 552a of title 5, United States Code.
- (6) **Section 1515 – Access of Offices of Inspector General to Certain Records and Employers.** With respect to this Grant Contract, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:
 - i. to examine any records, of the Grantee or any of its subcontractors, that pertain to and involve transactions relating or pursuant to this Grant Contract; and
 - ii. to interview any officer or employee of the Grantee or any subcontractors regarding such transactions.
- (7) **Section 1606 – Wage Rate Requirements.** All laborers and mechanics employed by pursuant to this Grant Contract shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by

the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference.

For purposes of this Grant Contract, laborer or mechanic includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards.

- (8) Section 1605 – Buy American Requirements for Construction Material – Buy American, Use of American Iron, Steel, and Manufactured Goods. None of the funds provided by this Grant Contract may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.
- f. The Grantee agrees to comply with any modifications or additional requirements that may be imposed by law and future guidance and clarifications of Recovery Act requirements.
- g. If the Grantee enters into one or more subcontracts for any of the services performed under this Grant Contract, each subcontract shall contain provisions specifically imposing on the subcontractor all requirements set forth in this Contract Section E. 14., “Federal Economic Stimulus Funding.”

IN WITNESS WHEREOF,

SHELBY COUNTY GOVERNMENT:

A.C. WHARTON, JR., MAYOR

DATE

DEPARTMENT OF HUMAN SERVICES:

VIRGINIA T. LODGE, COMMISSIONER

DATE

ATTACHMENT A
GRANT BUDGET
(GRANT BUDGET PAGE 1)

GRANTEE:		Shelby County Government - WAP			
APPLICABLE PERIOD: The grant budget line-item amounts below shall be applicable only to expense incurred during the period					
BEGINNING:		June 9, 2009	ENDING:	September 30, 2010	
POLICY 03 Object Line-item Reference	EXPENSE OBJECT LINE-ITEM CATEGORY ¹ (detail schedule(s) attached as applicable)		GRANT CONTRACT	GRANTEE PARTICIPATION	TOTAL PROJECT
1	Salaries		\$0.00	\$0.00	\$0.00
2	Benefits & Taxes		\$0.00	\$0.00	\$0.00
4, 15	Professional Fees/Grant & Awards ²		\$14,762,051.00	\$0.00	\$14,762,051.00
5	Supplies		\$0.00	\$0.00	\$0.00
6	Telephone		\$0.00	\$0.00	\$0.00
7	Postage & Shipping		\$0.00	\$0.00	\$0.00
8	Occupancy		\$0.00	\$0.00	\$0.00
9	Equipment Rental & Maintenance		\$0.00	\$0.00	\$0.00
10	Printing & Publications		\$0.00	\$0.00	\$0.00
11, 12	Travel / Conferences & Meetings		\$0.00	\$0.00	\$0.00
13	Interest ²		\$0.00	\$0.00	\$0.00
14	Insurance		\$0.00	\$0.00	\$0.00
16	Specific Assistance to Individuals		\$0.00	\$0.00	\$0.00
17	Depreciation ²		\$0.00	\$0.00	\$0.00
18	Other Non-Personnel ²		\$0.00	\$0.00	\$0.00
20	Capital Purchase ²		\$0.00	\$0.00	\$0.00
22	Indirect Cost		\$0.00	\$0.00	\$0.00
24	In-Kind Expense		\$0.00	\$0.00	\$0.00
25	GRAND TOTAL		\$14,762,051.00	\$0.00	\$14,762,051.00

¹ Each expense object line-item shall be defined by the Department of Finance and Administration Policy 03, *Uniform Reporting Requirements and Cost Allocation Plans for Subrecipients of Federal and State Grant Monies, Appendix A*. (posted on the Internet at: www.state.tn.us/finance/rds/ocr/policy03.pdf).

² Applicable detail attached if line-item is funded.

ATTACHMENT A (continued)
GRANT BUDGET LINE-ITEM DETAIL
(GRANT BUDGET PAGE 2)

[PROFESSIONAL FEE/ GRANT & AWARD]	AMOUNT
Energy audits, materials and labor as a part of the weatherization assistance provided to low-income households	\$14,762,051.00
TOTAL	\$14,762,051.00